



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

23-ORD-308

November 14, 2023

In re: Anthony Sadler/Lee Adjustment Center

Summary: The Lee Adjustment Center (“the Center”) did not violate the Open Records Act (“the Act”) when it denied a request for records it does not possess.

Open Records Decision

Inmate Anthony Sadler (“Appellant”) submitted a request to the Center for copies of his “medical diet order” and other records related to meals he was served between August 1 and October 4, 2023. The Appellant submitted his request to the Center, but he identified Aramark as the entity to which his request should be directed.¹ In a timely response, the Center denied the Appellant’s request because it is not the custodian of the requested records. The Center advised the Appellant to submit his request to Aramark, which the Center believed may possess the records the Appellant requested. This appeal followed.

Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to present a *prima facie* case that the requested records do exist in the agency's custody or control. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester establishes a *prima facie* case that records do or should exist in the agency’s custody or control, “then the agency may also be called upon to prove that its search was adequate.” *City of Ft. Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341).

¹ The Appellant’s request was also addressed to named individuals the Center claims are Aramark employees.

However, instead of attempting to make a *prima facie* case that the Center should possess responsive records, the Appellant claims the Center violated the Act because he directed his request to Aramark and not the Center. As such, he claims Aramark should have responded to his request instead of the Center. However, the record on appeal does not reflect the address to which the Appellant submitted his request. Presumably, he either mailed or hand delivered the request to the Center's official records custodian, because the Center is the agency that responded to it. "If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the *agency's* public records." KRS 61.872(4) (emphasis added).

Here, the Appellant provides no evidence that Aramark, a private corporation, is a public agency subject to the Act. Moreover, in 12-ORD-222, the Office concluded that Aramark is not subject to the Act because it is a private corporation and the only state or local funds it receives are derived from a contract "obtained through a public competitive procurement." See KRS 61.870(1)(h). Thus, the Center was not obligated to "furnish the name and location" of Aramark's official records custodian, KRS 61.872(4), because Aramark is not required to designate an official records custodian. As a result, the Center did not violate the Act when it denied the Appellant's request for records it does not possess.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under KRS 61.880(3), the Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceedings. The Attorney General will accept notice of the complaint emailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

s/ Matthew Ray
Matthew Ray
Assistant Attorney General

Distributed to:

Anthony Sadler #151598

Kristy Hale

Daniel Akers

G. Edward Henry, II